

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0106

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to McCOOK-DEFINITIONS AND GENERAL  
2 PROVISIONS.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-1-1 be amended to read as follows:

5 22-1-1. The rule of the common law that penal statutes are to be strictly construed has no  
6 application to this title. All its criminal and penal provisions and all penal statutes ~~are to~~ shall  
7 be construed according to the fair import of their terms, with a view to effect their objects and  
8 promote justice.

9 Section 2. That § 22-1-2 be amended to read as follows:

10 22-1-2. Terms used in this title mean:

11 (1) If applied to the intent with which an act is done or omitted:

12 (a) The words, "malice, maliciously," and all derivatives thereof import a wish to  
13 intentionally vex, annoy, or injure another person, established either by proof  
14 or presumption of law;

15 (b) The words, "intent, intentionally," and all derivatives thereof, import a specific  
16 design to cause a certain result or, ~~when~~ if the material part of a charge is the



violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;

(c) The words, "knowledge, knowingly," and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge ~~when he~~ if that person is aware that the facts exist which bring the act or omission within the provisions of any statute. ~~It does not require knowledge~~ Knowledge of the unlawfulness of such act or omission is not required;

(d) The words, "reckless, recklessly," and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances ~~when he~~ if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist;

(e) The words, "neglect, negligently," and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent ~~man~~ person ordinarily bestows in acting in his or her own concerns;

(f) If the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent, or malice also constitutes sufficient culpability for such element. If recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. If knowledge suffices to establish an element of an offense, then intent or malice also constitutes

sufficient culpability for such element. If intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;

(2) "Actor," the person who takes the active part in a transaction;

(3) "Affirmative defense," an issue involving an alleged defense to which, unless the state's evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(5) "Check," a any check, draft, order or other commercial device which orders a financial institution to pay a sum certain of money on its presentment;

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;

(7) "Consideration," any type of property or thing of legal value, whether delivered in the past, present or to be delivered in the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how

1 trifling, is sufficient to constitute consideration;

2 (8) "Controlled weapon" includes a any firearm silencer, machine gun, or short shotgun,  
3 as those terms are defined in subdivisions (17), (23), and (46) of this section;

4 (9) "Crime of violence," any of the following crimes or an attempt to commit, or a  
5 conspiracy to commit, any of the ~~same~~ following crimes: murder, manslaughter, rape,  
6 ~~criminal pedophilia~~, aggravated assault, riot, robbery, burglary in the first ~~or second~~  
7 degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-  
8 19.1, felony child abuse as defined in § 26-10-1, or any other felony in the  
9 commission of which the perpetrator used force, or was armed with a dangerous  
10 weapon, or used any explosive or destructive device;

11 (10) "Dangerous weapon" or "deadly weapon," any firearm, stun gun, knife, or device,  
12 instrument, material, or substance, whether animate or inanimate, which is calculated  
13 or designed to inflict death or serious bodily harm, or by the manner in which it is  
14 used is likely to inflict death or serious bodily harm;

15 (11) "Dealer in stolen property," a any person who:

16 (a) Is found in possession or control of property stolen from two or more persons  
17 on separate occasions; or

18 (b) Has received stolen property in another transaction within the year preceding  
19 the commencement of the prosecution; or

20 (c) Trades in property similar to the type of stolen property received and acquires  
21 such property for a consideration which ~~he~~ that person knows is substantially  
22 below its reasonable value;

23 (12) "Deprive," to take or to withhold property of another or to dispose of property of  
24 another so as to make it unlikely that the owner will receive it;

(13) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;

(15) "Financial institution," a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the ~~word~~ term, "gunpowder," includes any propellant that upon oxidization emits heat and light and is commonly used in

1 firearms cartridges;

2 (17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the  
3 firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen  
4 or muffle the noise of the firing of any such weapon;

5 (18) "Government," the United States, any state, county, municipality, school district, or  
6 other political unit, or any department, agency, or subdivision of any of the foregoing,  
7 or any corporation or other association carrying out the functions of any of the  
8 foregoing;

9 (19) "Immediate family," any spouse, children, parents child, parent, or guardian of the  
10 victim;

11 (20) "Insanity," the condition of a person temporarily or partially deprived of reason, due  
12 to mental disease or defect, upon proof that at the time of committing the act ~~charged~~  
13 ~~against him, he,~~ the person was incapable of knowing its wrongfulness, but not  
14 including an abnormality manifested only by repeated unlawful or antisocial  
15 behavior;

16 (21) "Intoxication," a disturbance of mental or physical capacities resulting from the  
17 introduction of substances into the body. Intoxication is not, in itself, a mental  
18 disease or defect;

19 (22) "Law enforcement officer," ~~an~~ any officer, prosecutor, or employee of the state or any  
20 of its political subdivisions or of the United States, or, while on duty, an agent or  
21 employee of a railroad or express company or security personnel of an airline or  
22 airport, who is responsible for the prevention ~~or,~~ detection, or prosecution of crimes,  
23 for the enforcement of the criminal or highway traffic laws of the state, or for the  
24 supervision of confined persons convicted of a crime;

- 1       (23) "Machine gun," any firearm, whatever its size and usual designation, that  
2               automatically discharges two or more cartridges by a single function of the firing  
3               device;
- 4       (24) "Mental illness," a any substantial psychiatric disorder of thought, mood or behavior  
5               which affects a person at the time of the commission of the offense and which  
6               impairs a person's judgment, but not to the extent that ~~he~~ the person is incapable of  
7               knowing the wrongfulness of ~~his~~ such act. Mental illness does not include  
8               abnormalities manifested only by repeated criminal or otherwise antisocial conduct;
- 9       (25) "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals,  
10              as well as an act of baseness, vileness, or depravity in the private and social duties  
11              which a person owes to his fellow man or to society in general;
- 12       (26) "Motor vehicle," ~~an~~ any automobile, motor truck, motorcycle, house trailer, trailer  
13              coach, cabin trailer, or any vehicle propelled by power other than muscular power;
- 14       (27) "Obtain,"
- 15              (a) In relation to property, to bring about a transfer or purported transfer of a legal  
16                  interest in the property, whether to the actor or another; or
- 17              (b) In relation to labor or service, to secure performance thereof;
- 18       (28) "Occupied structure," any structure:
- 19              (a) Which is the permanent or temporary habitation of any person, whether or not  
20                  any person is actually present;
- 21              (b) Which at the time is specially adapted for the overnight accommodation of any  
22                  person, whether or not any person is actually present; or
- 23              (c) In which at the time any person is present;
- 24       (29) "Offense" or "public offense," a any crime, petty offense, violation of a city or county

1 ordinance, or act prohibited by state or federal law;

2 (30) "Pass," to utter, publish or sell or to put or send forth into circulation. The term  
3 includes any delivery of a check to another for value with intent that it shall be put  
4 into circulation as money;

5 (31) "Person," a any natural person, ~~an~~ unborn child, association, limited liability  
6 company, corporation, firm, organization, partnership, or society. If the term is used  
7 to designate a party whose property may be the subject of a crime or petty offense,  
8 it also includes the United States, any other country, this state, and any other state or  
9 territory of the United States, and any of their political subdivisions, agencies, or  
10 corporations;

11 (32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to  
12 expel a projectile or projectiles by the action of an explosive;

13 (33) "Private place," a place where one may reasonably expect to be safe from casual or  
14 hostile intrusion or surveillance, but does not include a place to which the public or  
15 a substantial group thereof has access;

16 (34) "Process," a any writ, warrant, summons, or order issued in the course of judicial  
17 proceedings;

18 (35) "Property," anything of value, including, but not limited to, motor vehicles, real  
19 estate, tangible and intangible personal property, contract rights, choses-in-action,  
20 and other interests in or claims to wealth, admission or transportation tickets,  
21 captured or domestic animals, food and drink, electric or other power, services, and  
22 signatures which purport to create, maintain, or extinguish any legal obligation;

23 (36) "Property of another," property in which any person other than the actor has an  
24 interest upon which the actor is not privileged to infringe, regardless of the fact that



1 the actor also has an interest in the property and regardless of the fact that the other  
2 person might be precluded from civil recovery because the property was used in an  
3 unlawful transaction or was subject to forfeiture as contraband. Property in  
4 possession of an actor ~~shall~~ may not be deemed property of another who has only a  
5 security interest therein, even if legal title is in the creditor pursuant to a conditional  
6 sales contract or other security agreement;

7 (37) "Public employee," ~~anyone~~ any person employed by the state or any of its political  
8 subdivisions, who is not a public officer;

9 (38) "Public office," the position held by a public officer or employee;

10 (39) "Public officer," ~~an individual~~ any person who holds a position in the state  
11 government or in any of its political subdivisions, by election or appointment, for a  
12 definite period, whose duties are fixed by law, and who is invested with some portion  
13 of the sovereign functions of government;

14 (40) "Public record," any official book, paper, or record created, received, or used by or  
15 in any office or agency of the state or of any of its political subdivisions;

16 (41) "Publish," to disseminate, circulate or place before the public in any way, other than  
17 by speech which is not mechanically or electronically amplified;

18 (42) "Receive," to acquire possession, control or title, or to lend or borrow on the security  
19 of the property;

20 (43) "Service," labor that does not include a tangible commodity. The term includes, but  
21 is not limited to: labor; professional advice; telephone, cable television and other  
22 utility service; accommodations in hotels, restaurants or elsewhere; admissions to  
23 exhibits and entertainments; the use of machines designed to be operated by coin or  
24 other thing of value; and the use of rental property;

- 1 (44) "Seller," any person or employee engaged in the business of selling pistols at retail;
- 2 (45) "Short rifle," a any rifle having a barrel less than sixteen inches long, or an overall  
3 length of less than twenty-six inches;
- 4 (46) "Short shotgun," a any shotgun having a barrel less than eighteen inches long or an  
5 overall length of less than twenty-six inches;
- 6 (47) "Signature," any name, mark or sign written with intent to authenticate any  
7 instrument or writing;
- 8 (48) ~~"Steal," to commit any act of theft;~~
- 9 (49) "Structure," any house, building, outbuilding, motor vehicle, watercraft, aircraft,  
10 railroad car, ~~truck~~, trailer, tent, or other edifice, vehicle or shelter, or any portion  
11 thereof;
- 12 (50) "Stun gun," any battery-powered, pulsed electrical device of high voltage and low or  
13 no amperage that can disrupt the central nervous system and cause temporary loss of  
14 voluntary muscle control of a person;
- 15 (50A) "Unborn child," an individual organism of the species homo sapiens from  
16 fertilization until live birth.
- 17 (51) "Unoccupied structure," any structure which is not an occupied structure;
- 18 (52) "Vessel," ~~when~~ if used with reference to shipping, a any ship of any kind and every  
19 structure adapted to be navigated from place to place;
- 20 (53) "Victim," any natural person against whom the defendant in a criminal prosecution  
21 has committed or attempted to commit a crime;
- 22 (54) "Voluntary intoxication," intoxication caused by substances that an actor knowingly  
23 introduces into his or her body, the tendency of which is to cause intoxication;
- 24 (55) "Written instrument," any paper, document, or other instrument containing written

or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Section 3. That § 22-1-3 be repealed.

~~22-1-3. A crime is an act or omission, other than a petty offense, which is forbidden by law, and to which is annexed, upon conviction, one or more of the following punishments:~~

~~(1) Imprisonment;~~

~~(2) Fine;~~

~~(3) Removal from office;~~

~~(4) Removal of a candidate's name from a ballot, or~~

~~(5) Disqualification to hold and enjoy any public office of honor, trust, or profit in this state.~~

Section 4. That § 22-1-4 be amended to read as follows:

22-1-4. ~~Crimes are~~ Any crime is either ~~felonies~~ a felony or ~~misdemeanors~~ a misdemeanor.

A felony is a crime which is or may be punishable by imprisonment in the state penitentiary.

Every other crime is a misdemeanor.

Section 5. That § 22-1-6 be amended to read as follows:

22-1-6. No person may be convicted for the failure to perform an act if the act has been performed by another person, acting on ~~his~~ the other person's behalf, who is competent by law to perform it.

Section 6. That § 22-1-7 be amended to read as follows:

22-1-7. In the various cases in which the sending of a letter is made criminal by the statutes

1 of this state, the offense is deemed complete from the time when such letter is deposited in any  
2 post office or any other place or delivered to any person with intent that it ~~shall~~ be forwarded.

3 Section 7. That § 22-1-8 be amended to read as follows:

4 22-1-8. No act or omission ~~shall~~ may be deemed criminal or punishable except as prescribed  
5 or authorized by this title or by some other statute of this state.

6 Section 8. That § 22-1-9 be amended to read as follows:

7 22-1-9. ~~When~~ If the possession of an object is made an offense, ~~a~~ no law enforcement officer  
8 may ~~not~~ be convicted of that offense if ~~he~~ that law enforcement officer came into and retained  
9 possession of that object ~~as part of his~~ in the course of performing official duties.

10 Section 9. That § 22-1-10 be amended to read as follows:

11 22-1-10. The board of county commissioners may appoint, with the concurrence of the  
12 state's attorney or county sheriff, a victim or witness assistant to assist victims of crime if  
13 authorized by the board of county commissioners by resolution entered upon its minutes. The  
14 board of county commissioners shall set the compensation for the victim or witness assistant.

15 Section 10. That § 22-1-11 be amended to read as follows:

16 22-1-11. The victim or witness assistant shall:

- 17 (1) Advise the victim about the legal proceedings in which the victim will be involved;
- 18 (2) Advise the victim ~~when he will be required to appear~~ concerning any required  
19 appearance at any proceeding and if the proceeding is continued or postponed;
- 20 (3) Assist the state's attorney, court services officer, and the victim to determine the  
21 amount of monetary damages suffered by the victim and advise the victim about  
22 restitution;
- 23 (4) Advise, if the victim is less than sixteen years of age and the victim of certain crimes,  
24 the victim and one of the victim's immediate family that the preliminary hearing or

1 deposition testimony of the victim may be videotaped pursuant to § 23A-12-9;

2 (5) Advise the victim or one of the victim's immediate family if the defendant is released  
3 from custody and the defendant's bail conditions.

4 The victim or witness assistant may accompany the victim in any criminal proceeding.

5 Section 11. That § 22-1-12 be amended to read as follows:

6 22-1-12. No person, other than in the performance of his official duties, may disclose the  
7 identity and biographical information concerning a victim of a crime of violence or of a  
8 violation of § 22-22-7 until reasonable efforts have been made to notify one of the immediate  
9 family.

10 Section 12. The code counsel shall transfer §§ 22-1-10, 22-1-11, and 22-1-12 to chapter  
11 23A-28C and shall renumber the sections accordingly and adjust all appropriate cross  
12 references.